

**SMALL BUSINESS MANAGEMENT
RESEARCH REPORTS**

IMPACT OF OVERLAPPING SALES TAXES ON SMALL BUSINESS



Prepared by THE UNIVERSITY OF ALABAMA
For Small Business Administration
Washington 25, D. C.

#

650.7
A316P
no.30
C.2

650.7

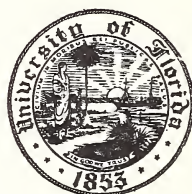
A316p

No. 30

C. 2

BUSINESS
ADM.

UNIVERSITY
OF FLORIDA
LIBRARIES



Impact of Overlapping Sales Taxes on Small Business

Prepared by the School of Commerce and Business Administration,
UNIVERSITY OF ALABAMA under the Small Business
Administration Management Research Grant Program

By

Paul E. Alyea
Professor of Finance

Paul W. Paustian
Project Director

January 1961

650.7

A316P

no. 30

C. 2

[BUREAU OF BUSINESS RESEARCH
UNIVERSITY OF ALABAMA
Printed Series No. 30]

Available from Bureau of Business Research,
P. O. Box KK, University, Alabama.

Price \$1.00

FOREWORD

This Small Business study, "Impact of Overlapping Sales Taxes on Small Business," has been conducted and prepared under the supervision of Dr. Paul W. Paustian, Project Director for the University of Alabama.

The research was financed by a grant made by the Small Business Administration, United States Government, under the authority of Public Law 699 (85th Congress).

Only a limited number of copies of this report have been printed. It is available for reference in any of the Small Business Administration offices throughout the United States or at many reference libraries. Copies of the report also may be purchased at a nominal charge directly from the University of Alabama.

Summaries of this study are being printed and will be available in reasonable quantities. These summaries may be secured from SBA field offices or from the Small Business Administration, Washington 25, D. C.

The Small Business Administration assumes no responsibility for the accuracy of the data contained herein, nor does it necessarily endorse any opinions, conclusions or recommendations which may be a part of this report.

PHILIP McCALLUM
Administrator
Small Business Administration

Dept of SBA
April '61

ACKNOWLEDGMENTS

I am grateful for the advice and assistance I received from a number of most co-operative individuals. Mr. Ed E. Reid, Executive Secretary of the Alabama League of Municipalities, rendered invaluable assistance. In particular I wish to acknowledge his help in securing information on municipal sales taxes and for his permission to reproduce the material contained in Appendix B. Mr. Harry H. Haden, Commissioner of Revenue, State of Alabama, and members of his staff, particularly Mr. Travis Williams, Chief of the Sales Tax Division, and Mr. Russell Hungerford, Chief of the Research Division, were helpful both in locating information and in making valuable suggestions. Mr. James Brown and Mr. John Lewis of the staff of the University of Alabama Bureau of Business Research, were of great help in connection with selection of the sample, criticism of the questionnaire, and in the tabulation of the returns.

Special thanks are due to the city clerks who so graciously complied with my request for local sales tax information, and to the respondents to the questionnaire. These two groups of willing co-operators provided much of the basic material for the project.

Mr. John Woods of Decatur Iron and Steel Company was most gracious in arranging for interviews with some of the most responsive and courteous businessmen to be found anywhere.

For any errors of omission or commission in making use of the information supplied, I must, alas, take full responsibility!



Digitized by the Internet Archive
in 2013

CONTENTS

	Page
Foreword	iii
Acknowledgments	v
I. Introduction	1
II. Legal Authority for Local Sales Taxes	6
III. Extent and Nature of Local Sales Taxes in Alabama	12
IV. How Local Sales Taxes Affect Smaller Businesses	18
V. Recommendations	32
Appendix A	39
Appendix B	40
Appendix C	42
Appendix D	43
Appendix E	44
Glossary	50

Chapter I

INTRODUCTION

PURPOSE

In recent decades spokesmen for small business have become increasingly insistent that elements of the American tax system discriminate against small business.¹ Emphasis has been directed at the Federal income taxes because the level of rates make it particularly difficult for small firms to finance growth from internal funds. Small business has, therefore, continued to press for preferential treatment in income tax laws, largely for financial reasons. It is not that the taxes *per se* are discriminatory; spokesmen for small business allege that the effects bear with peculiar severity on small firms because of the need to finance from private and internally generated funds.

Small businesses, however, feel themselves handicapped by the number of taxes, charges, regulations and controls imposed by an increasing number of agencies of all levels of government. The complaint here is not so much the effect of increased cash outflows on internal financing as it is on the time and energy involved in compliance. The chorus of complaints is reaching crescendo proportions. The problem is a very real one. For some businesses, in some states, the choice is between compliance and destruction, or non-compliance and survival. "Costs" of compliance are serious for every business, large or small, but the difference in degree amounts to a difference of kind—at least small business leaders see it in this perspective.

The quite recent topsy-like growth of overlapping state and local sales taxes affords an opportunity to study one small aspect of this problem. A research grant made available by the Small Business Administration made it possible to take advantage of this opportunity. The purpose of this project is to determine the nature and extent of adverse impacts on small business of the current trend toward non-integrated state and local sales taxes in Alabama. The purpose also encompasses an exploration of the actions which state and local governments might take to minimize the problem. Finally, an attempt is made to treat this problem in relation to the larger picture.

Only recently have Alabama municipal corporations levied general retail sales taxes. In some states, notably California and Illinois, the

1. The definition of Small Business, as used in this study, is that determined by the Small Business Administration under the authority: §§ 121.3 through 121.3-11 issued under Pub. Law 85-536 Sec. 5, 72 Stat. 385.

proportion of cities or counties levying general retail sales taxes is rapidly approaching one hundred per cent. The proportion in Alabama is much smaller, but, as will be shown, is not insignificant and is quite likely to increase at a rapid rate.

This project was suggested by businessmen who have experienced considerable inconvenience in complying with local sales taxes in Alabama. As might be supposed, the firms expressing interest in this subject are either wholesalers or manufacturers with two or more inter-county or inter-urban business outlets. Smaller retailers and service establishments undoubtedly find local sales taxes burdensome in terms of difficulties in maintaining volume if they attempt to raise prices, but they seldom need to contend with more than one local tax. This study is, therefore, confined to an examination of the nature and significance of the impact of local sales taxes on small manufacturers and wholesalers.

ESSENCE OF THE PROBLEM

Basically small wholesalers and manufacturers who are subject to local sales taxes are troubled about such questions as uncertainty over legal tax liability, the multiplicity of reporting and other requirements of government, and the investment in clerical services and the time and emotional drain required of owner-managers. They believe such uncertainties and costs are so unreasonable as to constitute a burden peculiarly onerous to small establishments. There are, of course, other complaints, but the compliance problem is uppermost.

That the annoyance, cost, and uncertainty aspects are highly significant may be documented by reference to the views of two businessmen.

A small manufacturer of metal products whose customers are general contractors was interviewed. He is doing business in several Alabama cities or counties with local sales taxes and also does considerable business in several other states. He must file monthly forms with each county and city in which sales are made. He must collect and remit use taxes on interstate sales to several states (Georgia, South Carolina, and Tennessee), and he is required to report and pay use taxes on his out-of-state purchases to Alabama and to the city in which his plant is located.

The burden of local sales taxes to this individual takes the following forms:

1. Uncertainty on the part of his salesmen as to whether certain sales are subject to taxes by the locality in which the sales are made. He feels that too much time of salesmen is absorbed in checking both local laws and which customers are in or out of corporate limits.
2. Since his customers are general contractors, he does not make regular sales in any given city or county. However, once he has made a sales tax return to a given local governmental unit, that unit makes repeated requests for periodic monthly reports. This businessman feels that such demands are unreasonable.

3. He believes his overhead is too large because he must employ a full-time clerk-bookkeeper to classify daily sales by location, some taxable and some not. His reporting responsibilities are such that he is contemplating employing a second person whose time will be taken up largely in complying with sales tax laws.

This manufacturer is not objecting to the dollar amount of tax payments. Nor is he particularly concerned with the dollar costs of compliance. His principal concern is the adverse effect upon his own efficiency and that of his organization—particularly his sales and office forces.

The second illustration came to us in the form of an unsolicited letter. The letter, which is reproduced in full below, is self-explanatory and certainly indicates the nature and dimensions of the tax problems imposed on businessmen.

Bureau of Business Research
University of Alabama
University, Alabama

Gentlemen:

I just got around to reading your article "Focus on Small Business" by Paul W. Paustian in your November 15, Vol. 30, No. 3 publication, *Alabama Business*.

Please, if you can possibly include it in your study, see if you can figure a way for tax collecting and reporting and paying to be consolidated and simplified. No patriotic citizen objects to reasonable taxation, but when the method of record keeping and reporting becomes so involved as to require him to employ an expert for that purpose alone, then the system is increasing his tax burden by that person's fees and is, in my humble opinion, entirely too burdensome.

Let me enumerate the reports required of our little business:

1. Monthly sales tax report.
2. Monthly fertilizer tonnage tax report.
3. Monthly depositary receipt for withholding tax and FICA tax report.
4. Quarterly excise tax report.
5. Quarterly FICA and withholding report.
6. Quarterly state unemployment tax report.
7. Quarterly state income tax report.
8. Annual statement to employees for withholding taxes, (Federal).
9. Annual statement to employees for withholding taxes, (State).
10. Annual reconciliation of income taxes withheld (Federal).
11. Annual reconciliation of income taxes withheld (State).
12. Annual report on fertilizer tonnage.
13. Alabama permit fee for corporation permit report.

14. Work injuries survey for Department of Labor.
15. Federal corporation income tax report.
16. State corporation income tax report.
17. Federal unemployment excise tax on wages.
18. Ad valorem taxes.
19. Taxes on automobile and truck licenses.
20. Taxes on business licenses.
21. Corporation franchise tax report.

One has to keep a special calendar just for tax reports and then, possibly, once or twice a year is invaded by two (usually) very prim representatives of the sales tax or some other taxing body to review your files and require your private office and your best bookkeeper to wait on them.

We have, as you know, manufacturer's taxes, excise taxes, workmen's compensation taxes, social security taxes, ad valorem taxes, capital stock taxes, licenses of every conceivable thing you can do or sell.

I get the "wim-wams" thinking about how one is to have time left to earn enough to be able after "waiting on the government" to be able to pay these.

Your consideration of how to relieve the above situation might provide a suitable answer to the dilemma we are in.

May I offer a simple sort of idea? Tax every person, firm or business 25% of its net profit. If that is not enough set the fee to whatever it takes to run the government, but require only one report a year, letting it be at the end of the season for the business venture.

Sincerely,

ORGANIZATION OF STUDY

The analysis adopted for this project involves three areas.

Chapter II is designed to explain the legal framework within which Alabama cities and counties may levy sales taxes. The material included is largely expository, but two inferences are drawn which are believed to be significant for a later analysis.

Chapter III is descriptive of the extent of local sales taxation in Alabama, together with some general statements with respect to relevant features of such taxes. Again, the findings form the basis for a later analysis.

Chapter IV is an attempt to do two things: (1) to quantify the extent to which local sales taxes concern Alabama businessmen; and (2) to pinpoint some of the more qualitative or subjective concerns and recommendations of these businessmen.

Chapter V contains analyses of the findings in previous chapters and suggests some of the changes that might be made under alternative approaches to the problems uncovered.

For obvious reasons no attempt is made to relate direct and indirect monetary burdens of these taxes either to investment or to operating results. Nor is there any attempt to make an empirical study of the incidence of such taxes. Parenthetically, it may be observed at this point that the implications of the local sales tax movement go far beyond a narrow consideration of this particular tax. Perhaps the greater usefulness of this project will be in some stimulation of thought on larger problems and, in particular, some aspects of constitutional restrictions, indifferent administration, and state-local fiscal interrelationships.

Chapter II

LEGAL AUTHORITY FOR LOCAL SALES TAXES

PURPOSE OF CHAPTER

It is, of course, well known that our federal, state, and local governments have different powers of taxation. The powers of the Federal Congress to tax are limited to those designated in the Constitution of the United States; the power of the individual states to tax is inherent, and is limited only by restrictions found in their own constitutions and those which are contained in the Constitution of the United States. Local governments have no sovereign status—they are merely instrumentalities of the states. The powers of local governments to tax are limited to those delegated by the state in which they are located. Customs, and constitutional provisions providing for delegation of taxing powers to local governments, differ among the several states.

The purpose of this chapter is to set forth basic elements of the legal authority for Alabama cities and counties to levy retail sales taxes. It is necessary to have some understanding of this subject because the nature, extent, and form of local tax ordinances are largely determined by the particular delegation made in a given state. Some of the unhappy effects of the Alabama practice are rooted in legal technicalities, and can be ameliorated only by changes, either in the constitution or in the wording of general laws enacted by the state legislature.

There are no "home rule" municipal corporations in Alabama. This means that no Alabama municipal corporation, whether county or city, may exercise any tax power which is not expressly granted either by the constitution or by the legislature.

The Constitution of Alabama does not expressly limit the extent to which privilege or license taxes may be used. This is in sharp contrast to the limitations placed on such taxes as property, income, and estates. In effect, the legislature has extreme latitude in its power to delegate to local units the power to levy privilege license taxes.

Such delegation may take the form of general grants to all counties or all cities, or it may be accomplished through "local" or limited application laws. With respect to sales taxes, counties obtain such powers through enactment of local laws. With the exception of three small towns, all city sales taxes are levied under the authority for license taxes—based on gross sales. Section 735, Title 37, Code of Alabama, 1940, reads:

735. (2154) (1339) License to business, trade, profession, etc.—All municipalities shall have the power to license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the constitution or laws of the state, which may be engaged in or carried on in the city or town; to fix the amount of licenses, the time for which they are to run not exceeding one year, and provide a penalty for doing business without a license, and to charge a fee of not exceeding fifty cents for issuing each license; to require sworn statements as to the amount of capital invested, or value of goods or stocks, or amounts of sales or receipts where the amount of the license is made to depend upon the amount of capital invested, or value of goods or stocks or amount of sales or receipts, and to punish any person or corporation for failure or refusal to furnish sworn statements or for giving of false statements in relation thereto. The license herein authorized as to persons, firms or corporations engaged in business in connection with interstate commerce, shall be confined to that portion within the limits of the state, and where such person, firm or corporation has an office or transacts business in the city or town imposing the license. The power to license conferred by this article may be used in the exercise of the police power as well as for the purpose of raising revenue, one or both.

THE AL MEANS CASE

Basic aspects of the legal status of municipal license tax measured by sales or receipts were explored by the Alabama Supreme Court in *Al Means, Inc., et al. v. City of Montgomery et al*, 105 So. 2d, 816.

On June 20, 1957, the City of Montgomery adopted such a tax ordinance to take effect in ten days. Citizens of Montgomery circulated and filed a referendum petition and the city commission repealed the ordinance.

On July 9, 1957, the city adopted a similar ordinance to take effect immediately. Another referendum petition was circulated and filed, but was denied. Bills were filed attacking the ordinance in several respects, the principal grounds for objection being:

1. That the ordinance did not contain a statement of urgency and was not required for immediate preservation of public health or safety.
2. That, in the absence of such a statement, the ordinance should have allowed a ten-day period for filing a referendum petition.
3. That the ordinance imposes a sales tax which the city has no authority to pass.
4. That it constitutes double taxation, is confiscatory, denies due process of law, and impairs the obligation of contracts.

Complainants also objected on grounds of violation of organic law to the exemptions and classifications contained in an amendment passed on August 6, 1957.

The Court based its decision to uphold the ordinance on the following legal principles:

1. The state may delegate its power to municipal corporations to license occupations within the limits of the city.
2. Express or specific power was granted municipal corporations to impose license taxes by Section 735, Title 37, Code of 1940.
3. Delegations of power must be plainly conferred by the state either in express terms or by necessary implication.
4. Taxing statutes are to be strictly construed against the taxing power.
5. Where express power to levy and collect a particular tax is conferred, the power to levy and collect other taxes is excluded.

With respect to the assertion that the tax ordinance was invalid because there was no express power to levy a sales tax, the Court cited the key factor in the opinion on the City of Dadeville case. (*Evers et. al. v. City of Dadeville*, 61 So. 2d, 78). The ordinance adopted by Dadeville in 1952 provided that the tax could be absorbed by the merchant *at his option*, whereas the state sales tax *requires* that it be paid by the consumer and not absorbed by the merchant. " . . . Basis for computing tax (here) is the gross receipts of the taxpayer for a prescribed time which he may, at his option, figure into his overhead expense and add to the sales price without liability to account therefor."

Thus a "sales" tax is not a sales tax unless it contains a provision for legal incidence on the vendee.

Apart from establishing legal validity for municipal "sales" taxes, this exercise in distinguishing between Tweedledee and Tweedledum has a consequence which is quite annoying to many taxpayers. Because Alabama municipalities may not levy vendee-type sales taxes, the base for the state sales tax is the total proceeds from sale of taxable items—even where the taxpayer has collected from his customer. That is, if a city has a 1 per cent tax and a businessman adds this tax to the retail price, the base of the state tax is 101 per cent of the before tax retail price. To many taxpayers this appears as an unwarranted "tax upon a tax." The relatively low rates of local sales taxes, together with allowable discounts for prompt payment, keep this tax pyramiding from being a heavy financial burden. However, because the technical reasons for this situation are not generally understood, much taxpayer resentment is generated.

Closely related to this apparent tax pyramiding is the issue of double taxation. The Montgomery taxpayers already held merchants' licenses, the amounts of which were measured by the gross annual business. Accordingly, they contended that the ordinance merely superimposed another license on essentially the same base and measure. The Court noted that double taxation as such is nowhere prohibited. Further, it cited the Dadeville case to the effect that where a municipal tax of this nature does not

require the payment of the tax as a condition precedent to doing business, it does not require the issuance of a license. Failure to report and pay, or otherwise comply with a municipal vendor-type sales tax, may result in monetary sanctions such as fines or interest penalties. Failure to comply does not invalidate the merchant's right to continue to do business. Thus municipal vendor-type sales taxes are privilege licenses for purposes of validating the tax, but no license need be issued; therefore, none can be revoked for non-compliance.

A third complaint treated in the *Al Means* case is the contention that the Montgomery tax is confiscatory. The position of the Court is that even if it could be shown that the license tax would destroy the business of any of the complainants, the ordinance would not be made invalid on that ground alone. "Those that enter upon a business take that risk." The general rule is " . . . the only limitation on license taxation (for revenue) seems to be that it must not be so unreasonable as to show a purpose to prohibit a business which is not in itself injurious to the public health and morals."

Finally, the Court addressed its attention to the question of the right of the city commissioners to make this ordinance effective immediately in the light of a provision in the General Enabling Act for suspending an ordinance upon presentation of a petition. The Court cited Section 212 of the Constitution of Alabama prohibiting delegation of the power to tax to individuals or private corporations or associations. It, therefore, concluded that the provision in the Enabling Act for an interval pending presentation of a referendum petition *cannot apply to revenue measures*. The voters of a city cannot be given power of review by referendum over revenue ordinances. "Certainly, in reason and common sense, the power to repeal a tax cannot co-exist with a power of a city commission to pledge the tax and agree to its continuous levy."

JURISDICTION

Available information fails to disclose any serious jurisdictional problem with respect to tax liabilities, either for payment or for collection of Alabama municipal sales or use taxes. Section 735, Title 37, Code of Alabama, 1940, confines such tax liability to persons having an office or transacting business in the city or town imposing the license. With respect to the nine county and three city taxes administered by the Alabama Department of Revenue, the tax is deemed due where title passes. However, no tax is due unless the vendor is "doing business" in the county or city. Delivery alone is not a criterion for doing business.

The underlying reality appears to be that neither local or state administrators have been aggressive in extending the legal tax reach of municipal corporations. This is in sharp contrast with the successful enlargement of the taxing jurisdiction of the states over interstate commerce (as evidenced by the Stockham and Northwestern cases) and the

great extension of liability to collect use taxes by out-of-state sellers (as evidenced by *Scripto* and preceding cases).

The present lack of aggressiveness may be to the advantage of itinerant vendors and others not clearly doing business in a given locality. If so, vendors clearly doing business are placed at a competitive disadvantage. There is, however, no assurance that this type of tolerance will continue; it is quite possible that at some future date the present immunity from taxation of inter-urban and inter-county sales will diminish in somewhat the same fashion that has resulted in the considerable reduction of immunity of interstate activities from state taxation. Although such a possibility is conjectural, it should be considered in any program designed to influence the future of local sales and use taxation.

TWO INFERENCES

1. The movement to enact local sales taxes in Alabama will continue, and probably at an accelerated pace. Reasons for this opinion include:

- a. There is a genuine tax and total revenue squeeze on most Alabama municipalities.
- b. Most alternative sources of local revenue in sufficient amounts are unavailable for a variety of reasons.
- c. For practical purposes the legal authority for vendor-type sales taxes is plenary.
- d. Doctrinaire objections to sales taxes are losing much of their force.
- e. The Alabama League of Municipalities, through its official *Journal*, is active in pushing municipal sales taxes as a partial remedy for the financially hard-pressed cities and towns. For example, the *Journal* staff recently has emphasized the virtually unrestricted legal authority to levy such taxes, has stressed various "arguments for" sales taxes, and has advised and assisted local sales tax administrations on how to obtain access to state sales tax data.¹

2. If it be permitted, the somewhat negative Gertrude Stein view of the law that "A license is not a license is not a license" removes one of the more effective sanctions (revocation of privilege to do business) for indifferent compliance with local ordinances. Any factor which handicaps "equal treatment of equals" in the administration of a tax is manifestly unfair to the taxpayer who is scrupulously honest in meeting his full liability to the government. Among available devices for ensuring full payment is the issue of a permit to engage in business contingent upon deposit of security which varies with value of assets and nature of business *e.g.*, the California method. Alabama requires a surety bond with respect to itinerant vendors (Section 22, Act No. 100, Alabama Laws, Second Special Session, 1959). However, in view of the fact that the state sales tax

1. See Appendix B.

law is also a privilege or license tax imposed on vendors, most of whom already possess business licenses, one wonders whether this provision could be enforced against a stubborn itinerant. Sanctions available to tax enforcement agencies in Alabama are limited to punishment for misdemeanors and interest or penalty payments for non-reporting or non-payment of taxes due. Alabama has no provision for criminal penalties other than an indictment and conviction for perjury.

Possible remedies for the conditions disclosed by this review of the municipal sales tax law in Alabama are discussed in the final chapter of this report.

Chapter III

EXTENT AND NATURE OF LOCAL SALES TAXES IN ALABAMA

PURPOSE OF CHAPTER

The intention of this chapter is to describe the extent, geographical location, and some of the essential features of Alabama county and city sales taxes. From such data, it is hoped that some understanding of the dimensions and concurrent trends may be furthered. It is not the present purpose to make a definitive study of local sales tax ordinances. This would be worth doing for other reasons, but might serve to divert attention from the underlying objectives of this project. The generalizations contained herein are not to be taken as universally true. There are many exceptions which would be noted in a definitive study.

The information needed to describe local sales tax practices in Alabama is difficult to come by and at best is disparate. With respect to obtaining information on local laws enacted by the legislature, permitting counties or cities to levy vendee-type sales taxes, it is necessary to search through the laws of each session. Local laws are given a public number which corresponds to their date of enactment, but they are neither indexed nor are they separately compiled in a volume containing only local laws. Parenthetically, the same point might be made concerning amendments to the constitution. Far, far too much time must be spent in a frustrating effort to locate relevant statutes. This is both unnecessary and intolerable. It is little wonder that even the tax services find it necessary to qualify their statements with respect to the law in Alabama. Certainly this bit of carelessness and indifference is a major factor in the uncertainty as to local tax liabilities, both by taxpayers and by their legal or other professional counsel. "Experts" in local laws in Alabama are few and far between.

The problem of obtaining information on municipal finances and tax ordinances is equally difficult but for a different reason. There is no state or central agency in Alabama empowered to collect data from municipalities. Several years back there was an office in the State Department of Finance with duties to collect annual financial reports of municipalities, and to perform certain services in connection with the issue of municipal bonds. The experiment was abortive, largely because of indifference on the part of the state administration combined with either inertia or recalcitrance on the part of local officials. If information is

essential to knowledge, and knowledge helpful in developing wisdom, the problem of developing sound policies is greatly aggravated by the lack of basic information.

The Alabama League of Municipalities attempts to keep informed of developments among its members, and the secretariat of the League has been consistently helpful and genuinely co-operative. Nonetheless, much time could be saved, and more complete and more accurate information could be made available, if a central governmental agency had the power, and would exercise it, in certain areas including this one. After all, local governments *are* but *instrumentalities* of the state, and the state cannot escape its inherent responsibilities for the actions of local governments which have effects transcending their geographical areas.

Quite aside from the implication that it is time to get tough-minded with respect to making essential information available from a central source, is the notion that a basic philosophical conflict is involved. To some extent the problems of small business are self-inflicted. Many of the provisions present in local regulations and license taxes are intended to protect local vested interests. They are decidedly non-neutral in their effects, and in far too many instances the underlying police power purpose is phony on its face. Although such a practice always has been incompatible with the rationale of a competitive and liberal society, it was tolerable in the days of an essentially rural society, when the localities were more like enclaves than integral parts of a larger society. Today this practice rapidly is becoming intolerable. Problems of compliance with tax and other laws cannot be resolved with any great degree of success until we obtain a re-thinking of the roles of federal, state and local governments, and of the objectives of business. States must assume more responsibility for the guidance and control of local activities which have extra-local effects. Local governments must be more willing to cooperate with the states and yield to such guidance, which means giving up the quaint notion that they are sovereign units. Businessmen must obtain a better understanding of the requirements of the times and stop trying to carry water on both shoulders.

THE EXTENT OF LOCAL SALES TAXES IN ALABAMA

According to available information, as of May 1960, thirteen counties and fifty-four cities were employing sales taxes. The situation works out something like this:

Counties having county taxes only: Bibb, Bullock, Chilton, Greene, Hale, Lawrence, Pickens, and Tuscaloosa (8).

Counties having both county and city sales taxes include: Colbert, Franklin, Lauderdale, Limestone, and Marion (5).

Counties having city sales taxes only include: Autauga, Barbour, Blount, Butler, Calhoun, Clarke, Dale, Dallas, Escambia, Etowah, Fayette, Geneva, Houston, Lamar, Madison, Marengo, Marshall, Mobile, Mont-

gomery, Morgan, Perry, Sumter, Talladega, Tallapoosa, Walker, Wilcox, and Winston (27).

The following counties have neither a county nor a city sales tax: Baldwin, Chambers, Cherokee, Choctaw, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, DeKalb, Elmore, Henry, Jackson, Jefferson, Lee, Lowndes, Macon, Monroe, Pike, Randolph, Russell, St. Clair, Shelby, and Washington (27).

Cities levying sales taxes in May, 1960, included:

Albertville	Detroit	Huntsville	Prichard
Anniston	Dothan	Jackson	Piedmont
Athens	Double Springs	Jasper	Russellville
Boaz	East Brewton	Leighton	Samson
Brewton	Elba	Linden	Sheffield
Brilliant	Enterprise	Millport	Sylacauga
Camden	Eufaula	Mobile	Talladega
Chickasaw	Fayette	Montgomery	Thomasville
Clayton	Florence	Muscle Shoals	Tuscumbia
Cordova	Gadsden	Oneonta	Uniontown
Dadeville	Geneva	Orrville	Vernon
Daleville	Georgiana	Ozark	Winfield
Decatur	Guin	Parrish	
Demopolis	Haleyville	Prattville	

The geographical distribution of local sales taxes is depicted on the map, page 15.

ADMINISTRATION OF LOCAL TAXES

The Alabama State Department of Revenue administers the sales taxes in nine counties—Bibb, Chilton, Franklin, Greene, Hale, Lawrence, Limestone, Marion, and Pickens—and three smaller towns—Double Springs, Haleyville, and Millport.

All of these state administered taxes are of the vendee-type which has the advantage of basing the state tax on the retail price before the local tax. The procedure is for the local legislative delegations to introduce a local law which acts as an enabling act authorizing state administration as well as permission for the county or city authorities to levy the tax.

The local laws are intended to be identical to the state law with the exception of rates which are one-third of those imposed by the state. With one exception, the forms used are identical in all local areas. The exception is occasioned because one county is slightly less liberal in the discounts permitted for prompt payment. At present, however, the forms for Marion and Pickens Counties and for Haleyville vary because these units did not succeed in getting their local laws amended to conform with the substantial changes in the state sales tax law in 1959. Since these units are operating on the old law, some administrative difficulties have been encountered.

LOCAL SALES TAXES IN ALABAMA

MAY 1, 1960



The charge-back to the local units for expenses of administration is intended only to reimburse the state for costs encountered. The procedure is to charge the local unit a percentage of taxes collected computed on the basis of the total cost of collecting state sales and use taxes to the total of such cases for each fiscal year. The charge is deducted from September payments.

JURISDICTION

In the five counties where there are as yet no city sales taxes the tax is county-wide. In at least one of the counties wherein some cities levy sales taxes, the tax is county-wide. This means that in a few cities the maximum rate is five per cent (three per cent state, one per cent county and one per cent city tax), while in counties without either county or city taxes the maximum rate is three per cent. Without question this results in an adverse competitive situation for some businesses. For example, one city clerk wrote: "One company in says that this tax is a disadvantage on submitting bids for machinery and other equipment to out-of-town concerns. If the one-half of one per cent was added to the bid, they would lose a lot of business, and the owner of the business tells me that the amount of tax that he should collect is too large for the company to absorb."

Insight into the twin problems of jurisdiction and enforcement is afforded by this exceptionally clear and extended comment from a city clerk:

"The most vigorous protests against the tax were by merchants and their customers outside the City. This sale is exempt if it meets all the requirements in Action 16-40 (1), (A) (1) which requires initiation of a written order outside the City and police jurisdiction. This, in my opinion, is the most difficult to enforce or to check against, and when analyzed, sometimes comes to a point of being ridiculous, since all a person would need to do technically to avail himself of the exemption after having examined the taxable items on the merchant's premises would be to sign an order after he is beyond the taxable limits of the City, and how is an inspector to determine whether this was actually done?

"Think of the consequences, should a City representative question a shopper on his way out of town with goods purchased, to ascertain whether the merchant had charged him tax on over-the-counter deliveries, the same as a local resident. The merchant has a perfect right to absorb the tax and not show it as charged to the customer if he so desires, and unless each such transaction is actually checked on in detail, it would easily be shown in the merchant's records as a tax-exempt sale, when the goods were actually delivered across the counter.

"The news reporters have about worn this subject out as news, however, and most surrounding towns have also put on a sales tax, which has practically neutralized all opposition and helped enforcement considerably."

A letter was mailed on January 28, 1960, to about thirty city clerks of cities believed to have sales taxes, requesting, among other things, a copy of the local ordinance, and copies of all forms used in administering the law. Clerks were invited to make comments or give opinions on local sales tax laws arising out of their experiences. Approximately twenty clerks responded, and the following generalizations are based on their replies.

1. Almost all cities base their ordinances on the relevant portions of the state law, the major differences being variations in rates, in disposition of the receipts, some differences in discounts for prompt payment, and arrangements for imposing the tax on vendors outside the city but inside the police jurisdiction.
2. The rates vary from a low of 1/8 per cent to one per cent.
3. There is considerable difference in the provisions for disposing of the receipts, particularly among the counties. A large variety of functions is financed specifically out of sales tax funds and, with respect to the county-wide taxes, there is no clear pattern as to the distribution of the taxes to the towns, school districts or other claimants.
4. The forms used closely parallel the state forms. Presumably, the rules promulgated by the State Department of Revenue are used by the local units, but this is only a presumption.
5. Most of the city clerks who expressed an opinion believe the tax to be "fair" and relatively easy to administer, although some do admit to possible loss of revenue from almost exclusive reliance on sales tax data obtained from the state.
6. Most of the local taxes are due monthly; the calendar is the same as that used by the state. The tax is due the twentieth day of the month succeeding the month covered by the return.
7. In general, there appears to be a maximum amount of coordination and cooperation as between local units and the state. This suggests that as the tax becomes more universally used by local units, some of the adverse effects will disappear.

Chapter IV

HOW LOCAL SALES TAXES AFFECT SMALLER BUSINESSES

RESEARCH APPROACHES

A small number of personal interviews and a larger number of questionnaires were used in an attempt to identify and quantify the effects of local sales taxes.

The interviews were in the nature of exploratory inquiries to determine the kinds of businesses that might be affected and to obtain a better understanding of the kinds of effects to look for. Six small wholesalers and manufacturers were interviewed. Of these, one disclosed considerable experience and voiced a number of complaints. Results of this interview are summarized in Chapter I. One avoided local sales taxes on sales other than those made in the home location by the simple device of making all sales FOB plant. A third was not aware of making any taxable sales within the jurisdiction of any local governmental unit having a sales tax. His philosophy of operation is to rely on the taxing authorities to tell him of any liability. He is quite willing to comply and to pay any penalties for non-compliance through ignorance. This, he thinks, is less wearing and less expensive than to try to determine in advance wherein he might have local tax liability. A fourth makes no taxable sales outside of his home location. The other two are exempt, one because the product is specifically exempted and the other because almost all of his sales are interstate or to exempt vendees. Neither of the latter two have any state sales tax liability although the last one might have a small local tax liability under vendor-type taxes.

The results of the interviews indicate that the problem in Alabama has not yet reached large proportions in the sense of affecting a high percentage of vendors. It did indicate, however, that there exists a degree of uncertainty as to possible tax liabilities. In at least one case there was an indication of laxness in the administration of a local tax.

THE SAMPLE

A letter (Appendix C) and a questionnaire (Appendix D) were sent to 103 manufacturers and 192 wholesalers. Retailers and service establishments were not included for reasons stated in Chapter I. Industry classification Number 24, "Lumber and wood products" (except furniture), was deleted from manufacturing for reasons of very small size and disproportionate numbers of firms, *e.g.*, "peckerwood" sawmills.

The sample was designed to give maximum geographic coverage. Manufacturing firms were selected at random from all such firms in each county. The number of firms selected in each county was determined by counting the number of counties or cities levying local sales taxes; manufacturers located in counties without a local tax were not included in the sample. In addition, twenty-four firms located in Jefferson County were included, as well as seven firms in the state-wide classification. The total firms sent questionnaires worked out to approximately ten per cent of all manufacturers located in local sales tax areas.

Wholesalers were selected at random on the basis of approximately ten per cent of firms in each of the sixty-seven counties, plus two additional firms for each local sales tax in the county. To this, fifteen firms in the state-wide classification were added. This worked out to about a seven per cent sample of all small wholesalers in Alabama.

Forty-two per cent returns were received from manufacturers and forty-seven per cent returns were received from wholesalers.¹

QUANTITATIVE SUMMARY OF RESPONSES

1. Manufacturers

Forty-three manufacturers responded to the questionnaire. Of these, thirty-five or eighty-one per cent answered that they were subject to the Alabama state sales tax. Four stated they were not and four failed to reply.

Twenty-three, or fifty-three per cent of the respondents, stated they were subject to city or county sales taxes, fourteen stated they were not so subject, and six failed to answer. However, if the twenty-three are compared with the thirty-five who had a state sales tax liability, the percentage subject to both levies approaches sixty-six. It should be noted, however, that the total number of local sales taxes levied on these twenty-three firms is only forty-one—which indicates that most manufacturers subject to local sales taxes pay only to one local unit—presumably the city of their location.

Thirty-four expressed an opinion as to whether the burden of filing monthly sales or use tax reports is slight, moderate or heavy. Of this number, seven checked light, nineteen moderate, and eight checked heavy. Since no definitions were provided for differentiating between these degrees of burden, there is no way to determine the standards used. The responses, however, do reflect attitudes, which was the intention of the questionnaire.

Six respondents indicated that local sales taxes had caused them to increase their clerical staffs. Of these, four thought the monthly burden was moderate and two believed it to be heavy. Of the twenty-seven who said they had not put on any extra staff, seven felt the burden to be light, fifteen moderate, and five heavy. Two of the respondents stated they had

1. For details, see Appendix E. Tabular Summary of Responses, Tables I through VI.

not hired additional clerks, but were over-working those presently employed.

Eighteen, or forty-two per cent of the respondents, indicated they were uncertain about local sales tax liability, and the same number replied they had no such uncertainty. Of the eighteen who were uncertain, fifteen, or thirty-five per cent of all respondents, employed legal or other professional personnel to determine their liabilities. Of the eighteen who were not uncertain, nine, or fifty per cent, employed professional services.

The factual information in the paragraph above included all respondent manufacturers. Somewhat more meaningful results may be obtained with respect to two smaller groups: (1) All manufacturers subject to the Alabama state sales tax; and (2) manufacturers who are now subject to local sales taxes.

Thirty-five of the respondent manufacturers were subject to the Alabama state sales tax. Of this number, seventeen expressed uncertainty over local tax liabilities, and eight of these employed professional personnel. The total number of firms employing professional assistance was fourteen.

Twenty-three manufacturers now are subject to city or county sales taxes. Of these, thirteen express uncertainty over local tax liabilities, and eight use professional assistance. Of the thirteen, seven use professional accounting or legal services. (See Table 3, Appendix E).

These data appear to underscore one of the main complaints against the Alabama sales tax complex. Uncertainty of tax liabilities plagues a large proportion, despite the availability of professional assistance.

Firms were asked whether local sales taxes placed them in an adverse competitive position. Of the total responses sixteen, or thirty-five per cent, said "yes", but eighteen, or forty-two per cent, replied in the negative, with nine, or twenty-one per cent, not replying. Again, more meaningful results flow from those respondents who acknowledge to being subject to Alabama sales taxes.

Of the thirty-five manufacturers subject to the state tax, sixteen stated their competitive position was made adverse by local taxes, with the same number giving a negative response. Of the twenty-three now paying an Alabama local sales tax, twelve believed their competitive position was worsened.

Only one respondent stated that being subject to local sales taxes caused him to change his terms of sale.

The respondents were asked to check "yes" or "no" to the question of opinion whether "the spread of county and city sales and use taxation in Alabama constitutes an inconvenience of such magnitude that serious consideration should be given to adoption of some alternative, such as state sharing or local supplements to the state tax." Of the total number of respondents (forty-three), eighteen, or forty-two per cent, answered "yes", fourteen, or thirty-three per cent, answered "no", with eleven not

replying. Of the thirty-five subject to the state tax, eighteen answered "yes" and thirteen "no". Of the twenty-three subject to local sales taxes, eleven answered "yes" and nine "no". However, in this latter group of the twelve who thought their competitive position adversely affected, seven wanted some alternative to the present local sales tax program.

2. Wholesalers

Ninety wholesalers responded, of which seventy-four, or eighty-two per cent, are subject to the Alabama state sales tax. Fifty-five, or sixty-one per cent, are subject to one or more local sales taxes. In all, these fifty-five paid sales taxes to one hundred seven local units.

Of the total respondent wholesalers, seventeen thought the burden of filing several monthly sales or use tax reports was slight, thirty-three believed it to be moderate, and twenty-three said it was heavy. Of the seventy-four subject to the state sales tax, the answers were: seventeen slight, thirty-three moderate, and twenty heavy. Of the fifty-five now subject to local sales taxes in Alabama, thirteen felt the burden of filing extra reports slight, twenty-three thought it moderate, and sixteen said it was heavy.

Fourteen of the total group (seventy-four) stated they had increased their clerical staff as a result of local sales taxes. Ten, or seventy-one per cent of this group, characterized the burden as heavy. Of the fifty-five paying the state tax, thirteen employed additional help and nine of these stated the burden to be a heavy one. Of the thirty-five paying local sales taxes in Alabama, ten had put on extra help and eight of these characterized the burden as a heavy one.

Of the total group, twenty-five, or twenty-eight per cent, expressed an uncertainty over the local tax liability. Of this group twelve, or forty-eight per cent, employed professional services. In all, twenty-two firms used outside professional assistance.

Twenty-three out of the seventy-four paying the state tax expressed uncertainty with respect to local sales tax liabilities. Of these (twenty-three), ten employed outside professional services, while seventeen of the seventy-four used such services.

Twenty-one of the fifty-five paying local sales taxes were uncertain as to local tax liabilities, of which nine employed counsel or other professional services. Fourteen of the fifty-five retained professional services.

With respect to the opinion as to whether local sales taxes placed firms subject to them in an adverse competitive position, twenty-five, or twenty-eight per cent, answered in the affirmative. All twenty-five of these firms were subject to the state tax, which means that almost thirty-four per cent felt a competitive disadvantage. Twenty-four of the fifty-five subject to local sales taxes believed such taxes placed them at a disadvantage as compared with competitors selling in non-tax areas.

Four of the respondent wholesalers stated they had changed their terms of trade in some manner in an attempt to avoid local sales taxes.

A considerably larger proportion of wholesalers would like to see some alternative program of state and local sales taxes (such as local supplements to the state tax or local sharing of the state tax) than was the case with manufacturers. Forty-one out of ninety; thirty-nine out of seventy-four; and thirty-three out of fifty-five checked "yes" to Question No. 9. Of those stating that local taxes adversely affected their competitive position the proportions were even higher. Out of the total respondents eighty per cent would like to see more integration of state and local taxes. The same, or a slightly higher proportion, holds for those paying state taxes and those paying both state and local sales taxes.

COMMENTS ON QUANTITATIVE RESULTS FROM QUESTIONNAIRE

In general, the information from the questionnaires supports the intelligence gleaned from the six exploratory interviews. One major difference is that somewhat more of the firms responding to the mail inquiry are subject to local sales taxes than was disclosed by the interviews. In most other respects the results are quite comparable. There is considerable uncertainty as to tax liabilities, and those subject to local taxes express a fairly strong sense of burden from the necessity of making periodic reports both to the state and to local units.

This feeling of burden from existing taxes should magnify as more and more counties and cities turn to the sales tax. At present the average number of local monthly reports required of the respondents was 1.8 for manufacturers and slightly more than 1.9 for wholesalers. Uncertainty, extra clerk expense, and resort to professional services should increase with the number of localities levying sales taxes. On the other hand, a further spread of local sales taxes should reduce the feeling of adverse effects on competitive position. Under present conditions such adverse effects come largely from a failure to enforce use taxes on purchases from out-of-town or county suppliers who do not pay a sales tax in their home communities. The more universal the local taxes become, the smaller the competitive disadvantage.

Perhaps the most convincing result is that eighty per cent of all wholesalers who think they have a competitive disadvantage expressed a desire for some program of integration of state and local taxes and implied a desire for universality.

Without doubt, some questions may be raised with respect both to the size of the sample and its composition. It is believed, however, that the defects are comparatively minor, and the results support the conclusion that a problem now exists in this area and that it will become something of a major headache to an increasing proportion of small businesses.

OPINIONS AND COMMENTS OF RESPONDENTS

Item ten of the questionnaire invited respondents to describe their experiences, state their feelings, and suggest recommendations on county and city sales taxes. Nineteen manufacturers, out of a total of forty-three,

and thirty-four wholesalers, out of ninety, responded to this invitation. This would seem to indicate a rather widespread interest and concern.

After considerable attention to the proper manner of incorporating these comments in this report a decision was reached to pass a selected number of them on as received, but without identification. Comments designed principally to explain why a respondent was either exempt or otherwise not particularly concerned have been culled. A few are included which may seem irrelevant to the specific inquiry, but which may be significant to some of the larger issues of state-local taxation.

In addition to the sales tax we collect for five towns a one cent gasoline tax. This should be on a state level also since the business outside of the town have a one cent lower price in most cases making it one cent cheaper and also not having to provide the facilities demanded by customers who purchase from city businesses.

This respondent is very much in favor of state administration, and his comment indicates that he would like to see the taxes referred to both universal and uniform as to local rates.

We feel that the different taxing fields should be divided, that cities and counties should abandon sales and use taxes, then constitutional limits be placed on the State sales taxes. Once a tax is enacted it never is repealed, it is often increased and duplicated. We have taxes on taxes. Here is a fact: if you operate your business in such a way as to try to earn a 10% profit (net), and you collect a 3% sales tax for Alabama and 1% for a local Gov't., they get 40% as much from operation of your business as the management or owners plan to make. Also—income taxes on that. We have looked for a “Plugging up of holes” in government spending, but very little of it has happened.

Believe the laws should be furnished each taxpayer in definite form. Too many loop holes in exemptions, and different rates very confusing to clerical help.

Fifteen years ago the only tax we had to put on cigarettes was state tax. Today we have 32 different stamps to apply. One to each city or county having their own tax. *Sales tax may take the same route, if we are not careful. At least it is heading in that direction today.* (Italics supplied).

Believe sales taxes are most equitable taxes we have—even though they are burdensome. Procedures for reporting could be refined to help make it easier to file sales tax returns.

This respondent is subject to two local taxes, believes the burden is a heavy one, employs professional counsel, *but* sees no adverse competitive result, and does not think state and county taxes should be integrated.

I think the continued spread of these local tax burdens will be serious and

cause additional expense to handle. I only have one point at present, but if this continues to spread, it will cause us additional bookkeeping expense.

The worst tax we have to contend with in Alabama is *local delivery taxes in almost every community*. (Emphasis supplied).

Establish definite areas of taxation by cities, county, state and federal governments.

My personal opinion (though not of my attorney) is that the "local" sales and use taxes on other than retail items is illegal—certainly placing a heavy burden on all concerned.

We are in the foundry business—the state should furnish changes to us in the rule—whether administrative or by court decision on the principal materials used in the foundry business. If we should have to report to other states than Alabama on sales made in inter-state commerce it would be a heavy burden.

Paying sales tax to every county and city to which merchandise is delivered can be a terrible headache and a lot of bookkeeping. We did have quite a bit of difficulty at first, but since we now have a plant both in..... and, both counties and cities have agreed that we may pay into each county and city the amount taxable to the county and city in which the plant is located. We have had some trouble with other cities asking for tax on merchandise delivered in their city.

This is one of the few responses related to the problem of legal jurisdiction. As pointed out in Chapter II, the view of the Sales Tax Division of the Alabama Department of Revenue is that delivery alone is not sufficient evidence of "doing business" and thereby establishing a local tax liability. Presumably the cities and counties referred to arrived at the same conclusion.

The only reason tax forms and remittances have not increased clerical help is that I do it myself and it sure is time consuming.

County and Municipal sales taxes are good if collected at state level and returned to counties.

We have a 1 cent county-wide tax in County for *industrial* purposes. Although it is necessary for us to absorb this in selling printed matter outside the county, we feel that the tax is urgently needed to support our economy.

I have not found sales taxes nearly so burdensome as some other taxes such as state unemployment tax and even this was burdensome only dur-

ing the first year and a half I was in business because of the very high rate which applies until an experience rating is qualified for.

I hate to bother with it but think it is a fair tax.

The burden at present is not excessive but if all counties and cities in this state have the right to impose sales taxes, the job could become quite impossible.

So far the County sales tax has not been a factor in making sales except where out of county distributors enter in the competition for certain equipment sales.

We are at a disadvantage on meeting competition. We have tire salesmen coming into our city selling tires. They are not forced to buy license for the city or county, they make sales and do not report tax to the city, therefore the customers get their tires at least 1% cheaper and out of state dealers do not charge state sales tax; this gives them a 4% advantage on price not counting the saving in license. We also are told by the city that we are supposed to charge sales tax on sales made by our trucks out in the country which I think is unfair to the country customer. Also we sell to a neighboring city that also has a sales tax. We are told by the city to collect sales tax for them; therefore we are supposed to collect 1% for each city (..... and). We collected for the State, Federal, County & City over \$250,000.00 in 1959 in the form of Gasoline tax, Excise tax, and Sales tax.

This respondent has highlighted two important issues: (1) The fact of an adverse competitive result which would disappear under universal sales taxation or strict enforcement of a local use tax. (2) An attempt by an aggressive local tax administration to extend its jurisdiction beyond its territorial limits.

We are not at the present time paying a local sales tax as we are just outside the city limits. However, there is a question as to whether we should pay it as we are considered in the "police jurisdiction." Naturally we strenuously object to paying it.

Alabama law recognizes a so-called police jurisdiction which gives legal sanction to an imposition of business license taxes on firms outside the municipal boundaries, but within the police jurisdiction. The usual rate is fifty per cent of the rate imposed on businesses within the city. One of the problems discussed in Chapter V is how to work out a universal and, perhaps, an integrated state-county-city sales tax system and meet the competitive interests of all governmental units. The "fiction" of the police jurisdiction adds another dimension to this problem—one which very few states have to contend with.

When a firm operates throughout the U.S. with sales offices, representatives, and salesmen in many areas, it soon becomes beset with endless tax

returns; unemployment insurance, disability benefits, compensation, franchise, personal property, sales, etc., etc. We do not *pay* sales tax as all sales are for resale. However, we find it necessary to register and file with several states and localities; to post bonds, file waivers, etc., etc. Taxes are becoming more and more a business expense not only for filing and paying but also for the detailed work involved.

This respondent was one of several who point out that the sales tax "problem" is merely a part of a much larger package which needs consideration.

I would favor county and or city taxes only as a last resort. It is not right for out-of-town customers to pay local city taxes.

Looks like some kind of single effort could be worked out and prorate the proceeds—similar to the United Appeal. Just take the whole thing at one time and get it over with.

Our company is engaged in direct selling, that is door to door selling of cosmetics through the use of independent retailers . . . Technically, we are not liable for sales tax, but as a convenience for our dealers we add the applicable sales taxes to the cost of the merchandise, showing taxes separately on the invoice, and remit in total to the applicable taxing authorities.

The fact that various county and municipal authorities have instituted overlapping taxes has made the entire sales tax picture extremely confusing. Apparently even the tax services have difficulty determining whether a sale subject to county sales tax is exempt from tax within a city in that particular county.

Possibly the most efficient way of handling sales taxes would be to make payment to one central authority which would, in turn, allocate the funds to the various taxing authorities.

This business is subject to Alabama sales tax through purchase and sale of equipment to pulpwood producers (those actually cutting pulpwood). The main endeavor of a business is that of serving as a purchase dealer for the paper mills as a source of supply for paper pulp. The business is located in the county area and not inside city limits Monthly sales subject to sales tax would average 20 to 30 transactions on equipment sales. A combined sales tax utilizing one reporting form and distributed to the state, counties, cities, etc., by the state would be most welcome.

The main trouble with my business is that a firm buying STRICTLY on price alone will take the untaxed price over a 4% tax every time. This is, however, true in 1 case out of 50 in our business. Most local firms are aware of the tax situation and buy locally to boost HOME, etc.

The taxes are completely out of reason!

Would much rather contend with a sales tax than to pay a city license in every town in Alabama which we might have a truck going through and this is what happens. Some of the Alabama towns license is so heavy that it is ridiculous for the size of the town. In Florida, we do not pay a license in any town except the ones we have a branch in.

The issue raised by this respondent is the possibility of substituting a sales type privilege license tax for other types of licenses through some process of consolidation. This notion is treated at some length in Chapter V.

We experience difficulties in determining the amount of privilege licenses that we must pay municipalities each year. We carry on business in approximately 100 cities and towns in north Alabama and almost every one of these have privilege licenses. Half of these towns never mail out an assessment, just a past due statement with a penalty added on.

Quite clearly this wholesaler is concerned about a problem which transcends the sales tax. However, it is a serious one and is given some attention in Chapter V.

In our opinion, the sales tax alone does not constitute enough inconveniences to worry. It is the total of all the reports and records that we have to keep for the government (City, State, and Federal) that bothers us. We have only one bookkeeper and she spends about half her time on reports.

The state makes us collect sales tax on everything we sell in Alabama to a carnival. They insist that when we sell to a carnival man that is the final sale and the carnival man only sells the chance, but what it amounts to is that they collect sales tax twice on the same item. We have to pay sales tax when we sell to the carnival man and the state imposes sales tax on him for all he takes in. We tried to explain to the man from Montgomery but he wouldn't have it.

Actually, we wind up having to pay the tax out of our pockets because the carnival people refuse to pay it. They can order it from outside the state and not have to pay it, so it just comes down to us having to pay the tax ourselves or losing the trade.

Several interesting points are involved in this comment: definition of final sale; the possibility of discriminatory double taxation arising out of imperfections in definitions or rules; an adverse competitive effect largely due to imperfections in administration of the use tax; and the ineffectiveness of the provision in the state law making it mandatory to shift the tax to the customer. Quite likely these particular problems involve only a small proportion of firms subject to retail sales taxation, but they are very real to those who must contend with them.

Actually the state law is not unclear on the point of liability for the tax under the circumstances as stated. Wholesalers are required to collect the tax from sales to unlicensed retailers. They are not required to pay or collect the sales tax on sales to licensed retailers. This respondent should ascertain whether the carnival man is a licensed retailer—if so, the state would not collect. He should see Alabama Sales Tax Regulation 28-162, for further instructions. Of course, the implied threat on the part of the carnival to buy out of state and save on sales taxes is a question of fact.

Local sales and use taxes are no more onerous than other forms of taxation, however, we have the impression from your questionnaire that it is a foregone conclusion that additional taxes will be levied. We strongly urge that you, as educators, make every effort to halt the spread of taxation before we are devoured by it. Efforts should be made to eliminate waste and graft of public funds and expenditures should be reduced so that the income from the present tax structure is adequate. We ask, how much government do our people want and how much government are they willing to pay for? We believe maximums have been attained on each of these points.

As pointed out in Chapter II the number of county and city sales taxes is almost certain to increase.

The county of takes us for “use” for material never used in County. We operate in five counties, but have to pay “use” for all material delivered to our plant. (This is for the birds!)

I operate the sales company. “Beer”. Please send me a questionnaire for some observations on this.

In my opinion counties and cities should not be allowed to levy sales taxes. The sales tax should be levied only by the state. City and county revenues should be derived from property taxes.

I would not want any more taxes added to what we have, and any change that is made always increases taxes rather than lowers them, for that reason I would not suggest that the state collect part of city and county taxes.

The following extended comment is from a small manufacturer whose plant is located in another state. Quite clearly, it is an admirable statement of the dilemma quite a few small businesses find themselves attempting to resolve: compliance versus survival. The word picture painted is not overdrawn. The image as this owner-manager sees it is one of state’s rights and local self-government run riot. The problem is real and is most difficult to handle. Some costs of compliance are inevitable. What can be done to make these reasonable without losing too much in terms of other objectives? This is the larger problem which is discussed in Chapter V.

June 9, 1960

Professor Paul E. Alyea
Box 1483
University, Alabama

Dear Professor Alyea:

I am returning your questionnaire since our firm is not subject to the Alabama State Sales or Use Tax.

However, since your study seems to be concerned with the burden that local and state taxation is placing on interstate commerce, I am setting forth some of the problems that we have had in the hope that your report may receive attention from the congressional committees which are working on this problem.

In Alabama, we do withhold state income tax from our traveling salesmen who work in the State of Alabama. In addition, we pay a privilege tax to the state for the operation of traveling salesmen, and we also pay a similar privilege license tax to every county in Alabama where our men work. This county tax seems to be rather burdensome for a small company, since it has no relation whatever to the profits that may have been earned in the county.

Fortunately, Alabama does not present us with the problems that other states and their subdivisions present. As you undoubtedly know, Georgia levies a state income tax on out-of-state businesses as do several other states, or at least they did until Congress gave some relief by preventing these state income taxes in most cases. In the State of Pennsylvania, individual counties, towns, hamlets, and even school districts are levying income taxes and are seeking to have corporations withhold income tax from employees who may do no more than drive through these jurisdictions in passing from one part of the state to the other. In addition, they claim income tax on their proportional share of the sales that may be done in their jurisdiction. The bookkeeping alone for all of these taxes would bankrupt our Company or any other company that attempted to comply rigidly with what these communities are seeking.

Our firm happens to be a strong believer in state's rights; however, the administrative and bookkeeping burdens in this field of state and local taxation on interstate commerce make it a very definite burden, and, if continued to the limits that seem probable, would force our Company and many others completely out of business.

I hope that the opinions expressed above will be helpful even though they do not pertain specifically to sales taxes.

Very truly yours,

SUMMARY OF FINDINGS AND SOME VALUE JUDGMENTS

1. A preponderance of both small manufacturers and small wholesalers who are subject to the state sales tax are also subject to local sales taxes. This is more so with respect to wholesalers because the sample of this group was state-wide, including many located in areas with few, if any, local sales taxes. Only those manufacturers located in cities or counties with local sales taxes were included in the sample.

At the moment, however, the mean average of local sales taxes applicable to such firms is small (less than two), and both the mode and median is even smaller (one). However, in view of the fact that local sales taxes are almost certain to spread, it is reasonable to expect an appreciable increase in the average number of such taxes affecting individual small businesses.

Unfortunately, the sample was too small to permit generalizations as to variations in the number of local sales taxes encountered by firms in sub-industry classifications. It seems reasonable to believe, however, that the results would vary considerably from industry to industry and also among firms in accordance with marketing practices. Such non-neutrality has social significance in terms of effects on allocation of resources and economic growth. Such a consideration greatly complicates the problem of evaluation of the factual information and opinions received from the survey. Such information should be considered from at least the three following points of view:

a. The effects of non-integrated state and local sales taxes on firms who are subject to the necessity of complying with only one or two local taxes.

b. The effects of such a sales tax complex on firms who, because of the nature of the industry or for other reasons, must contend with a much larger number of local taxes.

c. The incremental effects of local sales taxes viewed as just as one more legal requirement superimposed on a host of other licenses and regulations.

The recognition of at least three degrees or kinds of problems, requires the sales tax to be viewed as an imposition on business. The intention back of such levies may or may not be to impose a tax on consumers (and the incorporation of a mandatory forward-shifting provision in the state law is an indication of such an intention), nonetheless, the tax is *not a direct personal tax on consumers* and it, therefore, must affect business operations and decisions. The fact that in 1959 the Alabama state tax was amended to make many instrumental and intermediate goods subject to the tax is further evidence that this tax is a business tax in its fundamental character. It would be difficult not to conclude that the effects of non-universality, both in coverage of taxable sales (definitions, exemptions, exclusions, etc.) and geographically, transcend in importance the effects on a particular firm.

2. The information gathered on such points as the burden of filing several periodic returns, the effect on overhead from clerical expense, the uncertainty as to legal liability, and the felt effects on competitive position require little comment. These are real problems to all firms encountering them. They can be and should be minimized. Moreover, actions taken to minimize them for the most part would also have the advantage of making this tax somewhat more neutral and thereby tend to minimize some of the adverse social effects.

3. The writer was happily surprised at the number of respondents who clearly recognized the larger problem and many of its dimensions. The larger problem places the state-local sales tax complex in perspective by recognizing it to be incremental in nature. The sales taxes are additional requirements of business firms, superimposed on a multitude of other governmental impositions and regulations, with almost no integration of the differing demands. This piecemeal approach invites increasing aggressiveness in the administration of each separate law, which magnifies and multiplies the total compliance problem. As some of the comments received pointed out—full compliance would be incompatible with survival—and something less than full compliance invites intermittent harassment and promotes an uneasy feeling among those who want to be fully law-abiding.

4. As might have been expected the comments and opinions received covered a wide range. It is significant that very few of the comments received were mere expressions of bitterness. Some expressed either wonderment or conviction with respect to the total size of the tax bite and the desirability of much governmental spending. This is both understandable and healthy. On balance, the comments revealed that a gratifyingly large proportion of small businessmen are sincere, concerned, and knowledgeable. This is hopeful in the sense that much needed progress may be made, taking into consideration all points of view, and the many dimensions of the several problems. If this is the case, the resulting political judgments should reflect more than the results obtainable from an exclusive application of sheer power politics.

Chapter V

RECOMMENDATIONS

The data and opinions contained in Chapter IV show that many small businesses are experiencing difficulties with non-integrated state and local sales taxes, although the problems encountered vary in nature and intensity among firms. Whether the adverse situations caused by sales taxes are sufficiently serious to support the conclusion that changes should be sought at the earliest possible time must remain a matter of opinion. It is the considered opinion of the writer of this project that changes are needed, but that action should not so precipitate as to preclude a serious weighing of alternatives. It is, also, his opinion that the larger problem of the total complex of governmental regulations, controls, licenses, and tax compliance demands is rapidly approaching the point of becoming intolerable to many businesses.

If agreement on the nature and seriousness of a problem is difficult to come by, how much more difficult it is to obtain a consensus on recommendations. Recommendations demand much, both of those who offer and those who are considering them. They necessarily involve subjective value judgments as to goals or objectives. They require considerable skill in analysis. All available and promising alternatives must be weighed as carefully as possible. Conflicts among objectives are inevitable, and there is great inherent difficulty in arriving at an acceptable balance. Further, recommendations must take into account such things as political realities, necessary legal changes and administrative feasibility. Recommendations should neither be made lightly nor rejected out-of-hand; they require a spirit of humility, maximum objectivity, and a full recognition that unanimous agreement is neither to be expected nor necessarily to be desired.

The recommendations made in this chapter are both general in character and somewhat tentative. Evidence and analyses set forth in the preceding chapters serve to pinpoint some of the areas needing attention and indicate the direction reform should take, but do not afford a basis for choosing among alternative courses of action. The recommendations made herein are intended to be consistent with the findings of the survey but are necessarily affected by the total experience and information available to the writer.

With respect to the narrow question of local sales taxes, small businesses are troubled by uncertainty as to legal liabilities, additions to overhead from necessity to prepare and file numerous reports, and from adverse effects on their competitive position. They are resentful of the

interpretation of the law that prevents cities from levying vendee-type sales taxes, with the resulting "tax upon a tax." In essence, they want much more uniformity, and most of them would like to have the local taxes more universal. Most of those subject to local sales taxes have a strong preference for some alternative type of state or central administration.

The first general recommendation endorses the need for integration of state and local sales taxes. This view is made in full knowledge that there exists much cooperation between local and state administrations, and that for the most part the county and city sales tax ordinances conform very closely to the state laws as do the reporting forms. This cooperation and conformity keeps the existing conditions from being all but intolerable.

A variety of approaches may be taken to achieve more coordination and integration of state and local approaches. Two of these, increases in state taxes coupled with grants-in-aid to local units and local sharing of state collected taxes, are not given serious consideration in this context. What follows is based on the assumption that local governmental units in Alabama need a degree of fiscal autonomy and should (for whatever reasons) be required to take local responsibility for levying a portion of the tax receipts used to finance local programs. A second assumption is that it is a duty of the state government to be informed as to the extra-territorial effects of local taxes imposed through delegation, and to exercise leadership and control in the interest of the broader economic society. It is manifestly difficult to determine how local licenses and taxes do, or should or should not, have effects beyond the local jurisdiction, but the state should not abdicate its responsibilities. It follows that responsible local leadership should be neither intransigent nor recalcitrant in resisting reasonable restrictions on their powers to license and to tax.

There are at least three available approaches.

First, the state might make adjustments designed to meet a particular difficulty. For example, the "tax upon a tax" problem could be met very simply. Perhaps the easiest way to do this would be to make the local taxes exempt from the state tax base. Or, alternatively, the general law delegating privilege license taxing powers to municipalities could be amended specifically to authorize vendee-type sales taxes. The state legislature may delegate any taxing power it possesses unless prohibited from doing so by the state constitution. Or, alternatively, this particular problem could be resolved by making the local ordinances conform in considerable detail to the state law and having all of them administered by the state.

Second, Alabama could follow Illinois in providing for a state administered local tax to be imposed by local ordinances. In Illinois both counties and cities may levy local sales taxes of one per cent. The county tax is limited to unincorporated areas. The tax liability is based on the location of the seller. Illinois reports few problems, one reason being that contractors (everywhere a difficult problem) are exempted by ruling of

the court. A recent estimate has it that eleven hundred out of twelve hundred Illinois cities have adopted a sales tax.¹

Illinois, however, could experience high success under this arrangement, whereas, Alabama would have some difficulties to overcome because of two important considerations. First, Illinois counties for the most part are not in the position of having to compete aggressively for funds. This is because their functions are minor, and the property tax carries a very much higher effective rate there than it does in Alabama. The point is that Illinois counties did not resist restriction of their right to levy only on taxable sales outside municipal boundaries. Illinois counties have levied county sales taxes, but in some instances this is at the request of the cities who found that shopping centers were being located outside city limits for the sole purpose of beating the city tax. Where this was done, a subsequent county tax tended to result in annexation to the adjacent city. A second reason for the success of this simple arrangement in Illinois is that there was no previous history of local sales taxes to muddy the waters and create various vested interests.

Third, Alabama might consider at least some of the arrangements made by California in achieving state-local sales tax integration.² California had a considerable history of local sales taxes. Moreover, many serious problems arose out of both an aggressive attempt to enforce local use taxes and to extend the jurisdiction of local sales taxes, and a determination on the part of many buyers to save some tax money even if it cost them heavily in time and automobile expense.

California took four shots at the state-local sales tax administration problem before succeeding in 1955. Despite considerable coordination of state and local laws and forms and some cooperation between state and local administrations, a strong demand for integration developed among taxpayers in the late forties. A bill was introduced in 1949 which would have permitted cities to contract with the California State Board of Equalization for the administration of their sales and use taxes. This bill failed of passage. By 1953, about seventy per cent of the total state taxable retail business was subject to local taxes. In 1953 and 1954 bills were introduced and defeated which would have increased the rate of the state tax and distributed the proceeds among those counties and cities which refrained from levying such taxes. In 1955, the legislature adopted an integrating measure largely as a result of the insistence of the California Retailers Association.

The California program to meet these problems is based upon a general act under which county and city councils and boards may choose

1. Conversation with John Due, Professor of Economics, University of Illinois.

2. There are several articles bearing on the California experience. Two of the more useful for the general reader are:

Dixwell L. Pierce, "California has a Sales Tax Headache," *National Tax Journal*, June, 1953, pp. 4-6.

Ronald B. Welch, "Two and a Half Years of Progress in Integration," *Proceedings of the 51st Annual Tax Conference*, 1958, pp. 128-138.

to levy a sales tax. All local taxes are administered by the state. The state imposed a maximum rate of one per cent for the counties. Rates imposed by the cities may be anywhere from zero to one per cent. City taxes are credited against the county tax which means that a city cannot levy such a tax unless the county has acted. In a short period, forty-nine counties had levied sales taxes and only nine had not. Almost one hundred per cent of the cities located in counties with sales taxes had enacted such levies. About ninety-five per cent of the state sales tax base was included in the combined local tax base by 1958.

California has achieved almost complete uniformity, as well as universality, of combined state-local sales and use taxes. The local tax base is for practical purposes the same as that of the state and the general law permits local laws to be adjusted automatically for any change in the state law. The California tax applies to all sales of all retailers who have a place of business within a taxing jurisdiction. The place of business is the point of sales for local tax purposes, whether title passes there or at a point of delivery outside the place of business. California officials have remarked that the jurisdictional determination features of the law are of doubtful validity, but they trust the law will stand up if challenged. The way jurisdiction is determined simplifies the problem from the point of view of the taxpayer whose principal obligation seems to be to inform the State Board of Equalization as to the point of sales. The state board does not find it difficult to determine amounts due each locality from taxpayers with a single outlet. It has encountered much difficulty with respect to multiple-outlet, non-retail types of businesses, and, of course, with itinerants. In instances of doubt, California, ever ingenious, has made use of "county pots" and "state-wide pots" into which moneys are credited which cannot accurately be allocated to particular towns or counties, as the case may be. Allocations out of these pots are made proportionately to collections which have been allocated with accuracy.

It would be premature to make a definite recommendation at this time as between the Illinois and the California approach. At present, it seems questionable whether Alabama could use the Illinois plan. The problem is complicated here because so many of our counties do need more money and would fight for the privilege of sharing in sales tax collections from urban centers. The California approach permits a kind of bargaining between counties and cities over the sharing of city-collected taxes. Further, it is very doubtful whether a maximum rate of one per cent for the combined local levies would be adequate. One reason for this statement is that most of the existing local levies appear to be earmarked for specific functions, and many are pledged to support bond issues. A more important reason is that the total sales tax rate in some cities in at least one county is now five per cent.

It is, therefore, recommended that complete integration of Alabama state and local sales and use taxes be accomplished by some version of a general law permitting local units to levy such a tax. Local levies would

be state administered and be virtually identical with the state law. One basic law, one pattern of forms, one set of rulings, and a single administration would achieve a much needed uniformity. Universality, a feature so important to protect against competition with untaxed areas, cannot be guaranteed by any system leaving local levies to the initiative of local governing bodies. Experience, in both Illinois and California, however, gives strong indication that such an approach will achieve almost complete universality. To the extent both uniformity and universality result, to that extent uncertainty as to local tax liability would disappear.

Two other points should help answer some important questions which many readers may have.

The device of state administered locally shared taxes would ensure complete universality and minimum compliance costs. It is the considered opinion of the writer that the price would be too great for the limited gains in universality and reduced costs of compliance. Deciding upon a basis for sharing is difficult enough in the abstract. In practice, decisions are made almost exclusively by power politics. Alabama shares several taxes and other revenues with her local units. Some of the sharing formulae made sense in their historical context, but most of them reflect nothing except the superior political power of the smaller, less densely populated, largely rural counties.

A second point which concerns many is based on the fact that the effective rate on property is so low Alabama localities are under-using an historic and natural source of local tax revenues. Many would resist any program which would make it still easier for the property tax to be ignored in the drive for additional local funds. There is much force in this view. Property assessments should be equalized and increased perhaps as much as two hundred per cent. Such an increase would put the average assessed valuation at somewhere within shooting distance of the sixty per cent statutory requirement. Whether local sales tax reform should be delayed until this occurs is problematical for several reasons. (1) There are at least seventy local sales taxes now in existence. (2) The concentration of political power in this state remains in the hands of those bitterly opposed to property tax reform. (3) If many Alabama local governments are to make a respectable tax effort, it probably will be necessary to use local sales taxes *and* make a more intensive use of property taxes.

The second recommendation flowing out of this project is based on a conviction that there is an urgent need for study and action in making governmental requirements of business more neutral and more reasonable than they are at present. Whether a continuing absence of tax reform will lead to a taxpayers' revolt, as has been repeatedly suggested, is, of course, conjectural. The big picture has been painted many times, but a detailed program designed to correct distortions is yet to be developed. Perhaps the problem is so complex in both magnitude and dimensions as to defy definitive solution. This should not effectively debar attention to some of the more manageable features.

Many of the respondents to the questionnaire volunteered the opinion that compliance with sales taxes was a minor part of their problems. Of greater significance is the multitude of discriminatory privilege license taxes. Local delivery taxes were mentioned at least twice as being the worst single element in the Alabama local tax pattern.

It is, of course, well known that local governments in the Southeast, and particularly in Alabama, base their local taxes on privilege licenses. In part, this is because of rigid constitutional restrictions on their powers of taxation. In part, the cause is a deep-rooted dislike of direct taxation, particularly on property. It is further generally known that informed opinion of students of taxation is all but unanimous in condemning this intensive use of privilege licenses for revenue. The privilege license schedules are shot through with inconsistencies and gross discriminations, and bear no recognizable relation to any known acceptable canon of taxation. The decisions embodied in these schedules either are arbitrary in the extreme or are intended to protect vested interests of established businesses. The rationalization that some licenses, such as delivery taxes, are justified on the grounds that they are property tax equivalents has some plausibility. The Achilles heel in such an argument is that the property tax is *not a business tax*, thus there is no more warrant for attempting to integrate it with business taxes than there is to give a tax *credit* on personal income taxes for property taxes paid.

It is, therefore, recommended that a study be made of state and local privilege taxes with a view of determining whether these might be replaced by taxes superior on grounds of uniformity, universality and economic neutrality. It is, however, hazardous to play the game of relating tax repeals, tax offsets, and tax credits to tax reforms. In recent years there has been a spate of suggestions that certain deductions and tax credits be tied into state sales taxes. Many of these suggestions have originated with those who do not like the regressive effects of retail sales taxes, and are designed to prevent state tax systems from becoming too regressive. The following letter to the editor illustrates the type of trap to be avoided. The letter was written by one who dislikes sales taxes, is distrustful of any device designed to make them acceptable on grounds of equity, but the estimates he makes may be taken as highly realistic and responsible.

From the *St. Paul Dispatch*, June 15, 1960.

Mail Bag.—

AN OPEN FORUM FOR READERS

Discusses Sales Tax

Sir: I noticed in.....'s response to's letter that Mr..... is apparently going to make money by the enactment of a sales tax in Minnesota and the concurrent adjustments in the present tax structure. Actually I find the arguments of the sales tax proponents on this score fascinating. Think with me just a minute:

Let us assume that a broadly based sales tax would produce approximately \$150 million per year. According to various proposals of Mr.

..... and the Chamber of Commerce, the following deductions have to be made from that \$150 million:

Total sales tax collections.....\$150,000,000

Offsets and credits

Personal credit (\$10 per person for the 3.4 million persons in Minnesota).....	\$34,000,000
Personal property replacement.....	65,000,000
Replacement of temporary taxes and additional taxes levied by the 1959 session	45,000,000
State's share of real property tax levy.....	18,000,000
Cost of administration.....	3,000,000
Possible vendor's discounts.....	3,000,000

Total offsets and credits.....\$168,000,000

You can see right away that the sales tax advocates are not going to have money enough. And they continue to promise more cuts to more people. For example in Mr.'s letter to Mr....., I saw for the first time that he proposed to take the state out of the real property tax field.

To inject just a bit of levity in this very serious matter—their presentations remind me of the rabbit who was puzzled by his poor addition when he was so good at multiplication.

This illustrates why tax reform is so difficult and why our American tax system contains so many incongruities. Pointing the finger and complaining may be soul-satisfying, but accomplishes very little. If it be too much to expect an electorate and members of various interest groups to understand and to place the public interest above private advantage, perhaps one day a sufficient number will learn about the fallacy of composition. A few can benefit from special advantages—all cannot so benefit. When a sufficient number succeed in getting into the act, the play becomes too disorderly to be sustained.

With respect to the total picture very much indeed needs to be done. It appears to many observers that the principle of economic neutrality, so ably advanced by Professor Harold Groves and others, has not been explored in sufficient depth. One result is that too many serious studies and proposals for tax reform are unsatisfactory because they are not rooted in any generally acceptable principle or objective. There are many possible approaches to a further exploration of this subject. The Tax Institute might make it a subject of one of its Symposiums. The National Tax Association might put a study committee to work on this idea. Any among the national foundations engaged in making grants for social studies might find an outlet here.

Owner-managers of small businesses may find it in their best interest to encourage further study of these problems and seek to influence constructive legislation.

Appendix A
(Letter to City Clerks)

UNIVERSITY OF ALABAMA
SCHOOL OF COMMERCE AND BUSINESS ADMINISTRATION
UNIVERSITY, ALABAMA

BUREAU OF BUSINESS RESEARCH
PAUL W. PAUSTIAN, ACTING DIRECTOR

January 28, 1960

Our mutual friend Mr. Ed E. Reid has assured me you would be willing to furnish certain materials I need in making a study of sales taxes.

The University is studying certain operations and problems of small businesses in Alabama under the sponsorship of the Small Business Administration. My part in the general study is to investigate some of the effects of state and local sales taxes on small businesses.

My immediate problem is to obtain information on the taxes now levied by Alabama localities. I will be most grateful if you will send to me at your earliest convenience the following information.

1. A copy of the ordinance or law levying the retail sales or gross receipts tax.
2. A statement whether your law is state administered or locally administered.
3. A copy of all forms used in administering the law.
4. Citations to any law cases, or Attorney General's opinions, relating to your local sales tax.
5. Any personal opinions you choose to offer concerning problems of local sales taxation arising out of your experience.

I hope to complete the descriptive part of my study within two months, after which I must do some field work. If the occasion arises, I hope you will be willing to grant me an interview sometime this spring or early summer.

Sincerely yours,

Paul E. Alyea
Professor of Finance
Box 1483
University, Alabama

PEA:bt

Appendix B

AVAILABILITY OF STATE SALES TAX DATA

Source: Alabama League of Municipalities
Information Bulletin, Number 98.

Since 1951 the municipalities of Alabama have had access to sales tax information filed by local merchants with the State Department of Revenue in remitting the State sales tax. This has been very helpful.

Act No. 272 of the 1951 Session was the enabling legislation which gave municipalities access to State sales tax data. It was sponsored by the Alabama League of Municipalities in order to make available to municipalities for license tax enforcement purposes—and in checking on payments of municipal sales taxes when the municipalities levy such tax—sales tax returns of local businesses filed each month with the State Department of Revenue.

HOW TO GET SALES TAX DATA FROM THE STATE

Municipalities that desire to obtain from the State information as to the amount of sales reported to the State for a given period in order to use this data in comparing against returns filed with the municipality in remitting the municipal sales tax, must do the following things:

1. The local official who handles license tax collections (the clerk, license inspector, or license commissioner) must petition in writing the municipal council or commission to seek State sales tax data for his use in comparing statements and returns by local businesses in paying municipal license taxes.

2. The municipal council or commission must adopt a resolution calling upon the State Department of Revenue for the sales tax data needed, specifying the names of taxpayers and the period over which the returns are needed or wanted.

3. The mayor should then write a letter to the State Commissioner of Revenue, at the State Capitol in Montgomery, advising him of the action of the council, or commission, and should enclose a copy of the resolution, properly certified by the clerk, together with an exhibit, marked "Exhibit A," listing the businesses for which returns are wanted by the municipality.

4. The State Department of Revenue does not always keep its sales tax accounts in the trade name of the local business house, but keeps it in the name of the owner, unless the ownership be by partnership or corporation. So, in listing the local business, it would be a good idea to list them by trade name (such as The Fair Company) and also list the owner (John Doe, for example).

The League has prepared a sample resolution for the convenience of municipalities. We have submitted it to the State Department of Revenue for criticism, and it has been approved by the Department for standard use by municipalities. It provides:

A RESOLUTION

WHEREAS, Act No. 272, Session of 1951, approved July 24, 1951, provides in part as follows:

“(b) Any duly authorized agent of the tax collecting authority of any municipality or county of this state shall have access at any reasonable time upon the written request by the governing body of such municipality or county to the information contained in the sales tax returns, statements, or information secured by the Department of Revenue officials or employees, for the purpose of arriving at the amount of any tax due from any person, firm, or corporation, if such person, firm, or corporation is liable for, or if there is probable cause for believing such person, firm, or corporation might be liable for the payment of any tax to such municipality or county.

“(c) Any duly authorized tax collecting authority desiring to secure the information as set out in subsection (b) above shall petition the governing body of such municipality or county of this state to secure such information. Such governing body shall, after the passage of a proper resolution requesting such information, make written request to the Commissioner of Revenue of the State of Alabama for the required information and shall attach to such written request a copy of said resolution.”

WHEREAS, the City Council of the City of in pursuance of the foregoing authority and in connection with the task of making proper check on the accuracy of reports and statements required of local merchants and businesses by city ordinances in connection with the payment of municipal licenses, believes that information as to the amount of sales tax returns filed with the State Department of Revenue by each of the businesses shown on the accompanying sheet marked “Exhibit A” would be of great value in making proper check on returns and statements filed with the City of

NOW, THEREFORE, BE IT RESOLVED By the City Council of, Alabama, in regular session on this the.....day of, 195..., that the Commissioner of Revenue of the State of Alabama be and he is hereby requested to furnish said City of, Alabama, through its Mayor, information as to the gross receipts reported on sales tax forms furnished by the State of Alabama by the businesses and individuals listed in Exhibit A attached to and made a part of this resolution for the period of, 195..., through, 195....

Adopted this the.....day of, 195....

Approved:.....

Mayor

Authenticated:

.....
Municipal Clerk

Appendix C
(Letter to selected Small Wholesalers and Manufacturers)

UNIVERSITY OF ALABAMA
SCHOOL OF COMMERCE AND BUSINESS ADMINISTRATION
UNIVERSITY, ALABAMA

PAUL E. ALYEA

I am seeking your cooperation on a matter that may prove of considerable significance to Alabama business firms.

The University of Alabama is studying certain operations and problems of small businesses in Alabama under the sponsorship of the Small Business Administration. My part in the general study is to investigate effects of present practices of state and local sales taxes on smaller businesses.

As of now, thirteen Alabama counties and fifty-four Alabama municipalities have superimposed local sales taxes on the state sales tax. In nine counties, and three municipalities, the taxes are state administered by authority of local laws granting the localities affected the privilege of imposing supplementary rate of the state tax. The remainder of the local units are levying "sales" taxes in the form of privilege licenses measured by amount of sales or receipts. The number of counties and municipalities levying one or the other type of sales tax is increasing steadily and rapidly.

The enclosed form is designed to take a minimum amount of your time in stating the extent and nature of sales tax problems you may now be encountering. We are operating on a small budget, and with a small sample. *Please return the questionnaire* whether or not you have any immediate concern over local sales taxation.

The enclosed form does not pretend to be exhaustive. If, therefore, you are encountering problems other than those covered, please specify. The more detailed the information as to the opinions of Alabama businessmen, and the problems they are facing, the more forceful will be any recommendations which may arise out of this study.

Please be assured that this inquiry is purely independent. We have no official connection with any phase of tax administration.

Sincerely yours,

Paul E. Alyea
Professor of Finance
Box 1483
University, Alabama

PEA:vcf
Enclosure—1

Appendix D
QUESTIONNAIRE

Firm Name:

Firm Address:

Nature of Business:

Name of individual to whom further correspondence might be addressed:

1. Is your firm subject to the Alabama state sales or use tax? Yes () No ()
2. (a) Is your firm subject to sales or use taxation by any Alabama county or city? Yes () No ()
(b) If your answer to 2 (a) is yes, in how many counties or cities is your firm subject to such local taxes? Number.....
3. Would you say the burden of filing several monthly sales or use tax reports is: slight.....? moderate.....? or heavy.....?
4. Have local sales or use taxes caused you to increase your clerical staff? Yes () No ()
5. Have you experienced any uncertainty in determining whether your firm is legally liable for local sales or use taxation? Yes () No ()
6. Do you retain legal or other professional counsel in an attempt to determine your tax liabilities to local governments? Yes () No ()
7. Does the fact that your firm is subject to some local sales taxation place you in an adverse competitive position with firms doing business in untaxed areas? Yes () No ()
8. Has the fact that your firm is subject to some local sales taxation caused you to change your terms of sale, *e.g.*, selling only FOB at your firm's location? Yes () No ()
9. In your opinion does the spread of county and city sales and use taxation in Alabama constitute an inconvenience of such magnitude that serious consideration should be given to adoption of some alternative, such as state sharing or local supplements to the state tax? Yes () No ()
10. It will be most helpful if you will further describe your experiences, feelings, and recommendations on county and municipal sales taxes. Please use additional sheets if you wish to reply in greater detail.

PLEASE RETURN THIS QUESTIONNAIRE AT YOUR EARLIEST CONVENIENCE

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE I
ALL MANUFACTURING RESPONDENTS
(43 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax.....	35	81	4	9	4	9	43	100
Subject to city or county sales tax.....	23	53	14	33	6	14	43	100
Number city and county sales taxes ....	....	....	....	....	....	....	41	.....
Opinion as to compliance burden.....	34	79	0	0	9	21	43	100
Burden:								
Light.....	7	21	0	0	0	0	7	21
Moderate.....	19	56	0	0	0	0	19	56
Heavy.....	8	24	0	0	0	0	8	24
Total.....	34	100	0	0	0	0	34	100
Increased clerical staff.....	6	18	27	79	1	3	34	100
Burden:								
Light.....	0	0	7	21	0	0	7	21
Moderate	4	12	15	44	0	0	19	56
Heavy	2	6	5	15	1	3	8	24
Total	6	18	27	80	1	3	34	100
Uncertainty about tax liability.....	18	42	18	42	7	16	43	100
Retaining professional counsel.....	9	50	9	50	0	0	18	100
Retaining professional counsel.....	15	35	20	46	8	19	43	100
Adverse competitive position	16	37	18	42	9	21	43	100
Advocate report consolidation.....	10	62	4	25	2	13	16	100
Advocate report consolidation.....	18	42	14	33	11	26	43	100
Changed sales terms.....	2	5	31	71	10	23	43	100
Comments on tax situation.....	19	44	0	0	24	56	43	100

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE II
MANUFACTURING FIRMS SUBJECT TO ALABAMA SALES TAX
(35 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax.....	35	100	0	0	0	0	35	100
Subject to city or county sales tax.....	23	66	11	31	1	3	35	100
Number city and county sales taxes ....	....	....	....	....	....	....	41	.....
Opinion as to compliance burden.....	33	94	0	0	2	6	35	100
Burden:								
Light.....	6	18	0	0	0	0	6	18
Moderate	19	58	0	0	0	0	19	58
Heavy	8	24	0	0	0	0	8	24
Total	33	100	0	0	0	0	33	100
Increased clerical staff.....	6	18	26	79	1	3	33	100
Burden:								
Light.....	0	0	6	18	0	0	6	18
Moderate	4	12	15	45	0	0	19	58
Heavy	2	6	5	15	1	3	8	24
Total	6	18	26	79	1	3	33	100
Uncertainty about tax liability.....	17	48	17	48	1	2	35	100
Retaining professional counsel.....	8	47	9	53	0	0	17	100
Retaining professional counsel	14	40	19	54	2	6	35	100
Adverse competitive position.....	16	46	16	46	3	8	35	100
Advocate report consolidation.....	10	63	4	25	2	12	16	100
Advocate report consolidation.....	18	51	13	37	4	11	35	100
Changed sales terms.....	2	6	29	83	4	11	35	100
Comments on tax situation.....	14	40	0	0	21	60	35	100

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE III
MANUFACTURING FIRMS SUBJECT TO CITY OR COUNTY SALES TAX
(23 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax.....	23	100	0	0	0	0	23	100
Subject to city or county sales tax.....	23	100	0	0	0	0	23	100
Number city and county sales taxes ...	....	....	....	....	....	....	41	.....
Opinion as to compliance burden.....	23	100	0	0	0	0	23	100
Burden:								
Light.....	5	22	0	0	1	4	6	26
Moderate	13	57	0	0	0	0	13	57
Heavy.....	4	17	0	0	0	0	4	17
Total	22	96	0	0	1	4	23	100
Increased clerical staff.....	3	13	19	83	1	4	23	100
Burden:								
Light	0	0	5	22	1	4	6	26
Moderate	1	4	12	52	0	0	13	57
Heavy	2	9	2	9	0	0	4	17
Total	3	13	19	83	1	4	23	100
Uncertainty about tax liability.....	13	57	9	39	1	4	23	100
Retaining professional counsel.....	7	54	6	46	0	0	13	100
Retaining professional counsel	8	35	13	57	2	9	23	100
Adverse competitive position	12	52	10	43	1	4	23	100
Advocate report consolidation	7	58	3	25	2	17	12	100
Advocate report consolidation	11	48	9	39	3	13	23	100
Changed sales terms.....	2	9	20	87	1	4	23	100
Comments on tax situation.....	10	43	0	0	13	57	23	100

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE IV
ALL WHOLESALE RESPONDENTS
(90 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax	74	82	12	13	4	4	90	100
Subject to city or county sales tax	55	61	29	32	6	7	90	100
Number city and county sales taxes .....	....	....	....	....	....	....	107	....
Opinion as to compliance burden	73	81	0	0	17	19	90	100
Burden:								
Light	17	23	0	0	0	0	17	23
Moderate	33	45	0	0	0	0	33	45
Heavy	23	32	0	0	0	0	23	32
Total	73	100	0	0	0	0	73	100
Increased clerical staff	14	19	57	78	2	3	73	100
Burden:								
Light	1	1	16	22	0	0	17	23
Moderate	3	4	30	41	0	0	33	45
Heavy	10	14	11	15	2	3	23	32
Total	14	19	57	78	2	3	73	100
Uncertainty about tax liability	25	28	53	59	12	13	90	100
Retaining professional counsel	12	48	13	52	0	0	25	100
Retaining professional counsel	22	24	57	63	11	12	90	100
Adverse competitive position	25	28	47	52	18	20	90	100
Advocate report consolidation	20	80	4	16	1	4	25	100
Advocate report consolidation	41	46	30	33	19	21	90	100
Changed sales terms	4	4	69	77	17	19	90	100
Comments on tax situation	34	38	0	0	56	62	90	100

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE V
WHOLESALE FIRMS SUBJECT TO ALABAMA SALES TAX
(74 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax.....	74	100	0	0	0	0	74	100
Subject to city or county sales tax.....	55	75	18	24	1	1	74	100
Number city and county sales taxes ....	....	....	....	....	....	....	107	.....
Opinion as to compliance burden.....	70	95	0	0	4	5	74	100
Burden:								
Light.....	17	24	0	0	0	0	17	24
Moderate.....	33	47	0	0	0	0	33	47
Heavy.....	20	29	0	0	0	0	20	29
Total	70	100	0	0	0	0	70	100
Increased clerical staff	13	19	56	80	1	1	70	100
Burden:								
Light.....	1	1	16	23	0	0	17	24
Moderate	3	4	30	43	0	0	33	47
Heavy	9	13	10	14	1	1	20	29
Total	13	19	56	80	1	1	70	100
Uncertainty about tax liability.....	23	31	47	64	4	5	74	100
Retaining professional counsel.....	10	43	13	57	0	0	23	100
Retaining professional counsel.....	17	23	54	73	3	4	74	100
Adverse competitive position.....	25	34	42	57	7	9	74	100
Advocate report consolidation	20	80	4	16	1	4	25	100
Advocate report consolidation	39	53	28	38	7	9	74	100
Changed sales terms	4	5	64	86	6	8	74	100
Comments on tax situation.....	29	39	0	0	45	61	74	100

Appendix E

Tabular Summary of Responses to Questionnaire

TABLE VI
WHOLESALE FIRMS SUBJECT TO CITY OR COUNTY SALES TAX
(55 Firms)

	Yes		No		No answer		Total	
	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent	Num- ber	Per cent
Subject to Alabama sales tax.....	55	100	0	0	0	0	55	100
Subject to city or county sales tax.....	55	100	0	0	0	0	55	100
Number city and county sales taxes ....	....	....	....	....	....	....	107	....
Opinion as to compliance burden	52	95	0	0	3	5	55	100
Burden:								
Light.....	13	25	0	0	0	0	13	25
Moderate.....	23	44	0	0	0	0	23	44
Heavy.....	16	31	0	0	0	0	16	31
Total.....	52	100	0	0	0	0	52	100
Increased clerical staff	10	19	41	79	1	2	52	100
Burden:								
Light.....	1	2	12	23	0	0	13	25
Moderate.....	1	2	22	42	0	0	23	44
Heavy.....	8	15	7	13	1	2	16	31
Total	10	19	41	79	1	2	52	100
Uncertainty about tax liability.....	21	38	31	56	3	5	55	100
Retaining professional counsel.....	9	43	12	57	0	0	21	100
Retaining professional counsel	14	25	39	71	2	4	55	100
Adverse competitive position	24	44	27	49	4	7	55	100
Advocate report consolidation.....	20	83	3	13	1	4	24	100
Advocate report consolidation.....	33	60	19	35	3	5	55	100
Changed sales terms.....	3	5	49	89	3	5	55	100
Comments on tax situation.....	26	47	0	0	29	53	55	100

GLOSSARY

Ad valorem taxes: Taxes levied according to the value of the thing taxed, *e.g.*, the property tax.

Burden of local sales taxes: Includes much more than the dollar liability, *i.e.*, uncertainty as to whether a tax liability exists, effect on competitive position, costs of complying with the tax, etc.

Confiscatory: Public seizure of private property in an arbitrary manner without following a general rule or compensation.

Discriminatory double taxation: Occurs when two or more taxes are levied on one group of taxpayers such as producers or sellers of certain goods but not general, *i.e.*, not on the production or sale of all goods.

Double taxation: Has many meanings. Used herein to mean a second or subsequent tax on a base which is already taxed.

Effective rate: The product of the tax rate and the per cent of assessed value to market value, *e.g.*, if property is assessed as thirty per cent of its market value and the rate is three per cent, the effective rate is nine-tenths of one per cent.

Fiscal autonomy: Legal right of a (local) government to determine its own revenues and expenditures; independent of central government control.

General retail sales taxes: Taxes on the sale of tangible personal property not for resale as opposed to taxes on the sale of particular or specific goods such as cigarettes or playing cards.

Grants-in-aid to local units: State appropriations of specific sums to be disbursed by local governments in accordance with the terms of the grants.

Impact: The initial money burden of a tax.

Incidence: The ultimate money burden of a tax.

Incremental effects: Additional effects from an additional tax or other legal requirement.

Integration of state and local taxes: A system of sales taxes with a maximum of uniformity and a minimum of variation between the state tax and the local taxes; a whole or unified system of state and local sales taxes.

Instrumental and intermediate goods: Goods used in the process of producing consumers' goods, *e.g.*, supplies, tools, machinery.

Inter-urban, inter-county sales: Sales made vendors in one county or city to customers located in another county or city.

Itinerant vendors: Retailers who travel from place to place without a permanent business location in most of the places visited.

Legal incidence on the vendee: See vendee-type sales tax.

Legal tax liability: Amount of tax due under the law.

Legal tax reach: Extent of jurisdiction to tax permitted by the courts.

Local sales tax base: Refers to provision of coverage and definition in the local law as interpreted by the courts.

Local supplements: Local tax rates added to state rates with respect to a state tax.

Mandatory forward-shifting provision: A provision in the law that the subject of a tax—the taxpayer—must shift the tax to his customers by adding it to the before tax price.

Median: An average meaning mid-point.

Mode: An average meaning prevailing or most.

Non-integrated state and local sales taxes: See integrated.

Organic law: Synonym for constitutional or basic law.

Plenary: Full, entire, complete.

Property tax equivalents: A tax designed to place a burden on vendors who operate without investment in property subject to the property tax for the purpose of reducing the competitive disadvantage of local merchants subject to property taxation.

Revenue squeeze: Used to describe a somewhat general condition wherein available revenues are inadequate to cover desirable expenditures.

State-local fiscal inter-relationships: Covers much territory including grants by a state in aid of a local activity and shared taxes.

State sharing: A state tax which is shared with local units.

Tax jurisdiction—jurisdictional problem: One aspect of the “due process of law limitation” is the legal inability of a government to levy a tax beyond its territorial jurisdiction.

Tax liability: Used here in the term of liability under the law.

Tax pyramiding: Used herein as synonymous with the idea of a “tax upon a tax,” i.e., where another tax is included in the value of the base of another.

Universal sales taxation: One hundred per cent city and/or county sales taxation.

Use taxes: Taxes on goods bought by a consumer from a seller in another state and held or stored for use.

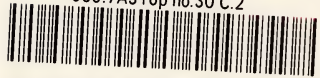
Vendee-type sales taxes: A sales tax law which makes it mandatory for the retailer to pass the tax to his customers by adding it to the purchase price.

“Where title passes”: A legal basis for determining tax liability or taxable situs.

650.7
A516p
no. 30
C.2

BUSINESS
ADM.

Impact of overlapping sales to main
650.7A316p no.30 C.2



3 1262 03302 4679

UNIV. OF FLA. LIBRARIES